



Oregon State Capitol
900 Court Street NE
Salem, Oregon 97301

February 10, 2026

RE: Federal Preemption Concerns Regarding DEQ's Inclusion of Raw Protein Packaging Under the Recycling Modernization Act

Dear Members of the Oregon Legislature,

The Coalition for Protein Packaging writes to formally express serious legal concerns regarding the Department of Environmental Quality's continued inclusion of raw meat, poultry, and seafood packaging as "covered products" under Oregon's Recycling Modernization Act (RMA). Based on the statutory framework, DEQ's own published analyses, CAA's approved program plan, and long-standing federal law, we believe DEQ's current position creates a substantial risk of federal pre-emption and exposes the State to avoidable legal challenge.

These concerns are not theoretical. They arise directly from the interaction between DEQ's RMA implementation and comprehensive federal food safety statutes governing meat and poultry packaging.

After reviewing the materials presented by the Department of Environmental Quality (DEQ)¹, DEQ's written responses to exemption requests², the agency's long-standing Materials Management in Oregon: 2050 Vision and Framework for Action³, testimony provided in recent committee hearings⁴, and DEQ's own statewide waste characterization⁵, we respectfully submit that the continued inclusion of raw meat, poultry, and seafood packaging under the RMA is inconsistent with DEQ policy, the purposes of the Act, federal law, and sound environmental outcomes.

Federal Law Expressly Pre-empts State Packaging Requirements for Meat and Poultry

The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) establish a comprehensive federal framework governing the processing, labeling, and packaging of meat and poultry products inspected by the U.S. Department of

Agriculture. Both statutes contain express pre-emption provisions that prohibit states from imposing requirements that are “different than or in addition to” federal requirements:

- FMIA – 21 U.S.C. § 678
- PPIA – 21 U.S.C. § 467e

These provisions explicitly pre-empt state laws relating to: “marking, labeling, packaging, or ingredient requirements” for federally inspected meat and poultry products.

Federal courts, including the U.S. Supreme Court, have repeatedly held that these pre-emption clauses “sweep widely” and bar not only direct state regulation, but also indirect or de facto requirements that compel changes in packaging or operations. (*National Meat Association v. Harris*, 565 U.S. 452 (2012)).

DEQ’s RMA Implementation Operates as a De Facto Packaging Requirement

While DEQ has asserted that the RMA does not mandate packaging redesign, the practical effect of requiring raw protein packaging producers to participate in a Producer Responsibility Organization (PRO), pay material-based fees, and subsidize recycling infrastructure creates a regulatory pressure to alter federally compliant packaging.

Furthermore, the recycling rate mandates in Oregon’s RMA act as a de facto ban for products that can’t be recycled. This de facto ban will force producers to change their products in Oregon so that they are not covered by the EPR legislation or it will leave the Oregon market without proper packaging for meat and other proteins.

As outlined in materials submitted to the Oregon Legislature and DEQ, including the Meat Institute’s legal analysis provided to Washington legislators (January 30, 2025), courts have consistently rejected attempts by states to avoid pre-emption by characterizing requirements as:

- sales restrictions,
- fee obligations, or
- downstream waste management mandates.

Where a state requirement cannot be satisfied without changing packaging materials or performance, it is treated as a packaging requirement for purposes of FMIA and PPIA pre-emption.

This principle has been affirmed in cases including:

- *National Meat Association v. Harris* (2012)
- *Jones v. Rath Packing Co.* (1977)
- *Del Real, LLC v. Harris* (9th Cir. 2016)

- Thornton v. Tyson Foods, Inc. (10th Cir. 2022)

DEQ's Own Findings Undermine Its Legal Position

DEQ's written responses to exemption requests and legislative testimony acknowledge that raw protein packaging:

- is not accepted in Oregon's uniform statewide recycling collection list,
- enters the commingled system only as contamination, and
- poses health and safety risks to workers and recycling operations.

DEQ has further recognized that a single contaminated item can compromise an entire load of recyclable material, diverting it to landfill.

Under DEQ's stated exemption criteria, materials that bypass the commingled recycling system — or should not enter it for safety reasons — present a "sound rationale" for exemption. Yet DEQ has declined to apply that rationale here, instead invoking concerns about "free ridership." The purpose of EPR legislation is to increase recycling rates and hold producers responsible for making sure their products are recycled. However, when EPR legislation includes materials that in their nature are contaminants and can't be recycled, it will only hurt the long-term success of the program.

DEQ's Waste Data Shows Free-Rider Concerns Are De Minimis

A central rationale offered for denying an exemption for raw protein packaging is concern about "free ridership" — the idea that exempting this packaging would shift costs onto other producers. The purpose of EPR is to have producers pay for the end-of-life management of a product, but when the product is not recyclable and there is no end-of-life options beyond landfilling, then enforcement becomes arbitrary and overly burdensome. The free ridership issue already exists in the sense that Oregon is forcing protein packagers to pay into a system that provides zero benefit for their products and essentially operates as a mandatory tax for packaging, in which there are no federally recognized viable solutions that don't otherwise compromise food safety and shelf stability.

Furthermore, DEQ's own 2023 statewide waste characterization analysis demonstrates that plastic film and flexible packaging represent a fraction of total material collected, and only a subset of that already small category consists of protein-contact packaging. In practical terms, the volume of raw protein packaging appearing in Oregon's waste stream is de minimis (0.8%) relative to the overall system. Another document states that plastic packaging, without identifying the specific type, comprises 13% of the total statewide volume. Regardless of whether it's less than 1% or 13% the federal preemption risk doesn't depend on volume. FMIA/PPIA preemption applies whether it's 0.8% or 13%.

When weighed against the scale of the recycling system as a whole, the marginal fees associated with protein packaging are negligible, while the costs of contamination from even a single protein-contaminated item are substantial. One contaminated package can compromise an entire load of otherwise valuable recyclables, diverting it to landfill and undermining the RMA's core objectives.

In this context, concerns about free ridership are not supported by the data. The far greater economic and environmental risk is contamination of high-value recyclable material — a risk that exemption would help prevent.

DEQ's Own Materials Management Framework Counsels Exclusion, Not Inclusion

DEQ's Materials Management in Oregon: 2050 (Vision), adopted by the Environmental Quality Commission emphasizes a shift from managing discards to managing materials across their full life cycle, with a central principle that recyclability alone is not a proxy for sustainability. The Vision explicitly warns that end-of-life-focused policies can lead to "penny-wise, pound-foolish" outcomes if they ignore health, safety, contamination, and upstream impacts such as food waste.

Raw protein packaging squarely fits the category of materials the Vision cautions against forcing into commingled recycling systems. Packaging that has come into contact with raw meat or poultry poses pathogen risks, is not accepted in Oregon's uniform statewide collection list, and can contaminate otherwise valuable recyclable material streams. In fact, DEQ has acknowledged that a single contaminated item can compromise an entire load of recyclables, diverting it to landfill.

Under DEQ's own stated exemption criteria, materials that bypass the commingled system or should not enter it for safety reasons represent a "sound rationale" for exemption. Raw protein packaging meets that standard.

Raw protein packaging is governed by federal food safety laws (Federal Meat Inspection Act, Poultry Product Inspection Act) and uses FDA approved material designed to control pathogens, maintain shelf life and ensure consumer safety. If the Legislature intended to bring federally regulated meat packaging into an environmental producer fee system – with known contamination and safety implications, it would have said so explicitly.

The RMA's Purpose Is Undermined by Including Protein Packaging

The RMA was designed to modernize Oregon's recycling system by reducing contamination, stabilizing end markets, and delivering higher-quality recyclable material. Including raw protein packaging—material that is neither collected for recycling nor suitable for commingled systems—works directly against these goals.

Requiring producers of protein packaging to fund recycling infrastructure they cannot safely use does not improve recycling performance. Instead, it shifts focus and

resources away from materials that actually deliver on the promise of the RMA: clean, dry, high-value recyclables with stable end markets.

Food Waste Reduction Is One of the Most Powerful Environmental Tools Available

DEQ's own materials management analysis shows that the largest environmental gains come from upstream decisions, not end-of-life handling. Modern protein packaging plays a critical role in extending shelf life, preventing spoilage, and reducing food waste—an outcome with clear and significant environmental benefits.⁶

Food waste drives greenhouse gas emissions, squanders water and energy, and undermines climate goals. Packaging that safely preserves protein reduces these impacts far more effectively than marginal gains in recycling rates for contaminated materials ever could. Exempting raw protein packaging aligns the RMA with Oregon's broader climate, waste-prevention, and sustainability objectives.

Inclusion Was Never Contemplated by the Legislature

A sponsor of the RMA has publicly acknowledged that raw meat and poultry packaging were never discussed or contemplated during passage of the law in 2021.⁷ That omission matters. It confirms that DEQ's current approach is an administrative expansion into a highly regulated, health-sensitive area that the Legislature did not weigh, debate, or intend to regulate through an environmental fee system.

When implementation creates conflicts with federal law, food safety, contamination reduction goals, and federal regulatory frameworks, legislative clarification is appropriate and necessary. It's clear that the Legislature never debated or evaluated the application of the RMA to raw meat and poultry packaging. Under modern administrative law — including the Supreme Court's decision in *Loper Bright* — agencies may not treat legislative silence as permission to expand statutes into federally regulated, health-sensitive domains.⁸

Exempting Protein Packaging Strengthens—Not Weakens—the RMA

Exempting raw protein packaging would:

- Reduce contamination in Oregon's recycling system;
- Protect worker and public health;
- Preserve high-value recyclable streams;
- Reduce food waste and associated environmental impacts; and
- Better align RMA implementation with DEQ's own Materials Management Vision.

This is not a request to weaken the RMA. It is a request to apply it more precisely, consistent with its stated goals and the evidence DEQ itself has developed over more than a decade of materials management research.

We respectfully urge the Legislature to support an exemption for raw meat, poultry, and seafood packaging so that Oregon’s recycling system can focus on materials that genuinely improve environmental outcomes and deliver on the promise of the Recycling Modernization Act.

Thank you for your consideration and for your continued leadership on Oregon’s environmental policy.

Sincerely,

Erin Hass
Director
Coalition for Protein Packaging

FOOTNOTES

- Federal Meat Inspection Act, 21 U.S.C. §§ 601–695; Poultry Products Inspection Act, 21 U.S.C. §§ 451–472.
- 21 U.S.C. § 678 (FMIA); 21 U.S.C. § 467e (PPIA).
- Nat’l Meat Ass’n v. Harris, 565 U.S. 452, 459–60 (2012).
- Commonwealth of Puerto Rico v. Franklin Cal. Tax-Free Tr., 579 U.S. 115, 125 (2016).
- Jones v. Rath Packing Co., 430 U.S. 519, 532 (1977); Grocery Mfrs. Ass’n v. Sorrell, 102 F. Supp. 3d 583 (D. Vt. 2015).
- Del Real, LLC v. Harris, 966 F. Supp. 2d 1047, 1064–65 (E.D. Cal. 2013), aff’d, 636 F. App’x 956 (9th Cir. 2016).
- Meat Institute, Effect of Federal Pre-Emption on State Law Packaging Requirements (Jan. 30, 2025).
- Engine Mfrs. Ass’n v. S. Coast Air Quality Mgmt. Dist., 541 U.S. 246, 255 (2004).
- See Motor Vehicle Mfrs. Ass’n v. State Farm, 463 U.S. 29, 42–43 (1983) (agency action arbitrary where it departs from prior policy without reasoned explanation).